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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 FREDRICK LEE CHRISTOPHE,

11 Plaintiff,

12 v.

13 T. NUNN,

14 Defendant.

No. 2:19-CV-519-BJR

ORDER TO SHOW CAUSE WHY
FINAL ORDER AND JUDGMENT
SHOULD NOT BE VACATED AND
RECONSIDERED

15 The Court enters this Order *sua sponte* based on information that has come to the Court's
16 attention since entry of the final order and judgment in this matter. On April 16, 2021, the Court
17 entered an order adopting Magistrate Judge Peterson's Report and Recommendation that
18 Defendant's motion for summary judgment should be granted. Dkt. No. 58. The Court
19 concurrently entered a separate judgment pursuant to Federal Rule of Civil Procedure 58 in favor
20 of Defendant. Dkt. No. 59. The Court's order and judgment were based in substantial part on
21 Plaintiff's failure to present evidence to support his allegation that he was bitten by Defendant's
22 K-9 partner during an arrest on January 15, 2019.
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1 However, court staff has since discovered that St. Joseph Hospital sent Plaintiff's medical
2 records to the Court in August 2020.¹ These medical records are filed under seal as Exhibit 1 to
3 this order. It appears that the medical records, which were addressed to the undersigned judge
4 and did not reference any case number, were misdirected after they were delivered to the
5 courthouse, and were not discovered until now by court staff.² As a result, the medical records
6 were not entered into the docket for this case before the Court issued its final order and
7 judgment.
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9 The medical records support Plaintiff's contention that he sought treatment at St. Joseph
10 Hospital on January 19, 2019, for a dog bite on his left thigh. At the same time, the medical
11 records also include information that is inconsistent with Plaintiff's sworn allegations that he was
12 lying face down on the ground while handcuffed when he was allegedly bitten by Defendant's
13 K-9 partner.
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15 Federal Rule of Civil Procedure (FRCP) 60(b) provides that "[o]n motion and just terms,
16 the court may relieve a party . . . from a final judgment, order or proceeding" for six enumerated
17 reasons. Of relevance here, FRCP 60(b)(1) authorizes relief from a final judgment or order
18 based on "mistake, inadvertence, surprise, or excusable neglect." This provision applies to
19 mistakes or inadvertence by the Court itself. *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*,
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23 ¹ Plaintiff had asserted in his objections to the Report and Recommendation that he had asked St. Joseph Hospital to
24 send these records to the Court. Dkt. No. 55 at 4 (Plaintiff states that he had "contacted St. Joseph Hospital and
25 requested medical records be forwarded to the court."). The medical records indicate that they were printed on
26 August 6, 2020. There is no postmark on the envelope in which the records were delivered (the front and back of
the envelope are the last two pages of Exhibit 1 to this Order), nor is there a date stamp indicating when the
materials were received at the courthouse.

² Under the Local Civil Rules of this Court, these medical records should have been submitted to the Court by
Plaintiff with his opposition to Defendant's summary judgment motion, rather than by having them sent separately
to the Court by the hospital. See Local Civil Rule 7(b)(2).

1 168 F.3d 347, 350 (9th Cir. 1999). In addition, FRCP 60(b)(6) more broadly authorizes the Court
2 to grant relief for “any other reason that justifies relief.”

3 The Ninth Circuit has held that a district court may *sua sponte* grant relief under FRCP
4 60(b) based on a mistake or inadvertence by the Court, provided that the party who obtained the
5 judgment in question has notice and an opportunity to be heard. *Kingvision*, 168 F.3d at 352.
6 Here, the failure to enter Plaintiff’s medical records from St. Joseph Hospital into the docket for
7 this case was a mistake or inadvertence that potentially impacted the Court’s decision to grant
8 summary judgment in favor of Defendant.
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10 Therefore, the Court ORDERS Defendant to show cause why the Court should not vacate
11 and reconsider its final order (Dkt. No. 58) and judgment (Dkt. No. 59) pursuant to FRCP
12 60(b)(1) or 60(b)(6) in light of the Court’s discovery that Plaintiff’s medical records from St.
13 Joseph Hospital were not entered into the docket for this case. Defendant’s response to this
14 Order shall be filed by May 27, 2021, and shall be limited to 15 pages. Plaintiff may file a reply
15 to Defendant’s response by June 10, 2021, limited to 15 pages.
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17 The Clerk is directed to send copies of this Order, including sealed Exhibit 1, to Plaintiff,
18 to Defendant’s counsel, and to Magistrate Judge Peterson.

19 DATED this 13th day of May, 2021.

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22 Barbara Jacobs Rothstein
23 U.S. District Court Judge
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